

NTSB Order No. EA-3989

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 27th day of September, 1993

Docket SE-9830  
SE-10053

The Administrator, by motion filed September 7, 1993, requests that we consider his reply to the respondent's denied motion. That pleading, as best we can interpret it, argues: 1) that our decision denying the petition for reconsideration inappropriately delayed respondent's surrender of his certificates because it provided that it would not be effective for 30 days; and 2) that, in our subsequent order denying respondent's motion to extend the effective date for an additional 30 days, we erroneously suggested that a stay to allow a respondent time to consider whether to seek judicial review might be available even though a stay pending judicial review would not be.<sup>3</sup> We discuss these concerns below.

An appeal to the Board under Section 609 of the Federal Aviation Act of 1958, as amended, automatically stays the effectiveness of a non-emergency or a not-immediately-effective order of the Administrator until the Board disposes of the matter. Consistent with the statutory intent to preserve the status quo until the review process has been completed, the Board routinely delays, for 30 days, the effective date of its orders that, following an appeal, affirm an order of the Administrator suspending or revoking a certificate. This period allows the respondent to consider further courses of action, including the filing within that 30 days of a petition for reconsideration. 49 C.F.R. 821.48(a). Since a petition for reconsideration acts to stay the Board order the petitioner seeks to have re-examined, id. at 821.50(f), it also acts to postpone indefinitely the requirement in such an order that the petitioner surrender his certificate within 30 days. Thus, contrary to the Administrator's apparent understanding of the matter, and although we do not ordinarily include the explicit language found in Frost,<sup>4</sup> the 30-day delay has been implicit in all orders denying a respondent's petition for reconsideration of a Board order that, by its terms, was not effective when issued.<sup>5</sup>

---

<sup>3</sup>The Administrator also suggests that the Board should take the opportunity this case provides to define with precision the circumstances under which untimely petitions for reconsideration will be entertained. We find no reason to expand our discussion of the matter (as appears in Order EA-3953 at p. 1, n. 1), as this case does not involve an untimely petition, but an effort to augment a petition for reconsideration that was filed on time.

<sup>4</sup>In our ordering paragraph there (NTSB Order EA-3953), we specifically provided that the revocation of respondent's certificates would begin 30 days from the service date.

<sup>5</sup>We are well aware, as the Administrator points out, that judicial review may be sought within 60, not 30 days of the Board's final order. We are also aware that our rules do not now provide a due date for the filing of a petition for stay pending

We think the 30-day deferral of certificate surrender is justified as a matter of fairness, if not in fact required by principles of due process. As noted, it allows respondents time to determine whether, and how, to proceed.<sup>6</sup> Given the fairly lengthy administrative process attendant to any appeal from one of the Administrator's non-emergency orders, during which time his order is stayed by law, we do not think it can be reasonably argued that immediate or instantaneous certificate surrender must follow the denial of a petition for reconsideration. In sum, we are not persuaded that NTSB Order EA-3979 should be modified so as to eliminate its recognition that respondent had 30 days from the denial of his petition for reconsideration (in NTSB Order EA-3953) within which to surrender his certificates.

Finally, we do not agree with the Administrator's apparent view that since we generally do not grant stays pending judicial review of orders upholding revocation, we erred, or created a "baffling" distinction, by not rejecting out of hand respondent's motion for more time to decide whether to go to court in a case in which his certificates had been revoked. We perceive no basis for any confusion. There may well be appropriate reasons for extending a stay for short periods of time that would not justify a prolonged stay pending final action by an appellate court. While no such reasons were identified in this proceeding, we find no inconsistency with precedent in our willingness to evaluate each request for a stay, for whatever duration, on its own merits.

**ACCORDINGLY, IT IS ORDERED THAT:**

The Administrator's request that we modify NTSB Order EA-3979 is denied.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

(..continued)

judicial review, and that it is not unusual for judicial stay requests to be filed more than 30 days after the Board order is served. We intend to address this issue in our upcoming review of our rules of practice to ensure consistency in our rules and timeliness of our actions.

<sup>6</sup>The deferred effective date also allows respondents to arrange their affairs, should the surrender of a certificate so require.